

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PICARRA CARTER and
CHYANNA HOOPER, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
May 9, 2006

Petitioner-Appellee,

v

RANDY HOLMES-MCSHANE,

Respondent-Appellant.

No. 266854
Wayne Circuit Court
Family Division
LC No. 95-327301-NA

Before: White, P.J., and Fitzgerald and Talbot, JJ.

WHITE, P.J. (*dissenting*).

I respectfully dissent. The record amply shows that respondent was not given sufficient time to demonstrate that he would be able to provide the proper care and custody for Chyanna and that reasonable efforts were not made to provide services to him.¹ The record is clear that a parent-agency agreement was not offered to respondent-father until August 23, 2005, yet his parental rights were terminated less than two months later at the October 4, 2005 trial.

The trial court's finding that there was clear and convincing evidence warranting termination under MCL 712A.19b(3)(g) was clearly erroneous given that the minor child was removed from her mother at the hospital within days of her birth, and respondent-father had never had opportunity to provide care or custody of his child. Given that respondent-father had less than two months to substantially comply with a treatment plan, for which no referrals were made and no order entered to adopt the plan, the court's finding that his rights should be terminated for failure to comply with the treatment plan and on the basis of the future likelihood of his ability to provide proper care and custody of his child is unsupported.

The trial court's findings that there was clear and convincing evidence to terminate respondent-father's parental rights under MCL 712A.19b(3)(j) and (k)(i) were also clearly

¹ I note that this is the position taken by the guardian ad litem, both below and on appeal.

erroneous. Little evidence was presented regarding respondent-father's capacity and whether the child would be harmed if placed in his home. Although respondent-father has a criminal history involving misdemeanors, that history standing alone is not dispositive of his capacity as a parent. Regarding subsection (3)(k)(i), respondent-father visited the child when she was born, established paternity, and visited her at the agency twice. Although he could have visited more often, there is no support in the record that he abandoned the child within the meaning of subsection (3)(k)(i).

I would reverse.

/s/ Helene N. White